IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12714 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANJAY ALIAS CHHOTU BAJIRAO MAHAJAN (MARATHI)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12714 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 09/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 17th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 19th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration seven cases registered against the petitioner under Sec. 392 of the Indian Penal Code. Secondly, the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 13th of August, 2004 and verified by the detaining authority on 14th of April, 2004. The identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. All seven cases came to be registered against the petitioner under Sections 392 and 114 of the Indian Penal Code on 4th of November 2003, 28th of November, 2003, 13th of January, 2004, 29th of January, 2004, 12th of March, 2004, 29th of April, 2004 and 6th of June, 2004. In all the cases, muddamal being gold ornaments, were recovered during investigation from the petitioner. It was alleged that the petitioner was engaged in illegal activities of snatching chains (necklace) from the necks of females when the petitioner found such opportunity. The detaining authority considered exhaustively and thoroughly the investigation papers in all the seven criminal cases registered against the petitioner.

4. The detaining authority also took into consideration two in-camera statements of the witnesses. Out of them, one witness referred to an incident occurred on 11th of July, 2004. On that day, the witness was approached by the petitioner with his accomplices and on suspicion that the witness was providing information about chain snatching activities of the petitioner to the police, the witness was beaten. Though a crowd was gathered, but with open knives, the petitioner and his accomplices went towards the crowd, so the persons gathered there, dispersed. In the second incident, which occurred on 14th of June, 2004, the witness was approached by the petitioner and his accomplices with a

broken chain of gold, and the witness was told by them that the petitioner was in need of money, and the witness should purchase the said broken chain of gold and give money to the petitioner. Witness knew the activities of the petitioner about chain snatching and, therefore, he refused. On refusal of the witness, he was beaten by the petitioner and his accomplices. A crowd was also gathered but dispersed on account of terror and fear of the petitioner and his accomplices who rushed towards the crowd with open knives.

5. Relying upon the above material, the detaining authority reached to the subject satisfaction that the petitioner was a habitual offender and was in habit of keeping deadly weapons with him. The petitioner was engaged in snatching chains from the necks of loner females and committed thereby robberies. The petitioner was earning through the sale of such stolen chains. Due to the activities of the petitioner, a feeling of insecurity among the public was spread and the petitioner was a dangerous person within the meaning of the PASA Act. The detaining authority also came to the conclusion that this illegal activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act, which is under challenge in this petition.

6. Learned Advocate Mr. Amrish K. Pandya for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length. The affidavit-in-reply as filed by the detaining authority and placed on record was also considered.

7. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the subjective satisfaction arrived at by the detaining authority is vitiated by non-application of mind by the detaining authority to the relevant materials placed before him.

8. As clearly disclosed from the grounds of detention, the petitioner was in judicial custody in all the seven criminal cases filed against him while the order of detention came to be served upon him. In this respect, the detaining authority reached to the subjective satisfaction that though the petitioner was

under judicial custody in all the seven cases, but he was likely to file an application of bail before the competent court and was likely to be released on bail. The detaining authority also came to the conclusion that on so releasing on bail, the petitioner was likely to engage himself in anti-social and illegal activities of chain snatching.

9. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675, wherein the Apex Court was pleased to observe that there must be cogent materials before the Officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available materials on record and must not be the ipse dixit of the Officer passing the order of detention. Likelihood of detenu's moving application for bail, was not held to be cogent material and detention order based on such material was liable to be quashed.

10. In the present case, after going through the papers placed on record, it clearly appears that no cogent material was placed before the detaining authority to infer that the petitioner was likely to be released on bail. Learned Advocate for the petitioner makes a statement that till today, the petitioner is under judicial custody and he never preferred any bail application before the competent court. Therefore, there was total absence of any material before the detaining authority to infer that the petitioner was likely to be released on bail and thereafter was likely to be involved in anti-social illegal activities. The subjective satisfaction arrived at by the detaining authority in this respect is not based on any material and, therefore, is not valid, legal or in accordance with law. The order under challenge is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by the Commissioner of Police, Ahmedabad City, on 17th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Sanjay Alias Chhotu Bajirao Mahajan (Marathi) is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. D permitted.

(J.R. Vora, J.)

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